

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CRIMINAL ACTION NO. 5:07-CR-00040-KDB-DSC

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL ANTHONY CHERRY,

Defendant.

ORDER

THIS MATTER is before the Court upon Defendant's *pro se* motion for compassionate release based on the COVID-19 pandemic under 18 U.S.C. § 3582(c)(1)(A). The Government opposes the motion. (Doc. No. 65).

Section 603(b) of the First Step Act amended § 3582(c)(1)(A), which previously only allowed a court to reduce a term of imprisonment on motion of the Director of the Bureau of Prisons (BOP). Now a court may entertain a motion filed by a defendant: (1) after full exhaustion of all administrative rights to appeal a failure of the BOP to bring a motion on the inmate's behalf; or (2) after the lapse of 30 days from the receipt of such a request by the warden of the facility, whichever is earlier. Here, the Government rightly notes that Defendant cannot obtain relief from this Court when he has not first sought it through the warden at his facility. (Doc. No. 65, at 7). Therefore, the Court is without authority to consider the merits of his claim. *See United States v. Raia*, 954 F.3d 594, 595 (3d Cir. 2020) (denying motion for compassionate release based on COVID-19 where the defendant did not first seek relief from BOP).

IT IS THEREFORE ORDERED that Defendant's motion for compassionate release, (Doc. No. 64), is **DENIED** without prejudice.

The Clerk is directed to certify copies of this Order to Defendant, the Federal Defender, the United States Attorney, the United States Marshals Service, and the United States Probation Office.

SO ORDERED.

Signed: May 4, 2020



Kenneth D. Bell
United States District Judge

